

A. REMARKS

1. Specification

The specification has been amended to incorporate the patent number for US Patent 6,732,990 in paragraph 0001. The specification has been further amended to correct typographical errors in paragraph 0009.

2. Claim Objections

Claim 7 has been amended to change "a" to --an-- in line 13.

3. Claim Rejections – 35 USC § 112

The examiner rejected claims 4 and 6 because "the crushable insert" in line 1 of Claim 4 lacked antecedent basis. Claim 4 has been amended to change "insert" to --extension--.

4. Claim Rejections – 35 USC § 102

The examiner rejected claims 1, 2 and 4 as being anticipated by Mazzotti (US 5,421,459). For the following reasons, *inter alia*, Mazzotti does not teach "an external crushable extension extending outwardly from and of unitary construction with the exterior wall."

First, Mazzotti's "vertical ribs 4n" are vertical ribs *inside* a compartment. The ribs serve "to stabilize the container 6 in the compartment and *stiffen* the whole compartment 4, improving its functionality as a *cup*." (emphasis added) (2:42-45). ... states that the "elastic quality of the ribs 4n also makes the compartment more flexible in receiving drink containers of different shapes." (2:45-48). In other words, the ribs facilitate receiving a cup in the compartment. The ribs do not facilitate inserting the compartment into an automotive cup holder cavity.

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Third, Mazzotti's compartment is for holding the tray in one hand and for holding a cup in the compartment: "[t]hus it is possible to hold the entire tray simply by gripping the compartment 4 with one hand 10 (see FIG. 2), while eating with the other hand." (2:49-51). Therefore, Mazzotti discloses a firm outer wall of compartment 4 for holding. Indeed, if compartment 4 were to be gripped on an elastic surface it could not function for its intended purpose of holding the tray in one hand while holding a cup in the compartment because the elastic vertical ribs extend inwardly for the purpose of gripping the container inserted into compartment 4, but would be inconsistent with the disclosure of Mazzotti if they extended outward for use in seating the compartment into a cup holder.

5. Claim Rejections – 35 USC §103

The examiner rejected claims 1-7 over Bradley (US 6,264,026) in view of Li (US 6,361,009). Applicant distinguishes over Li for the following reasons.

First, Li teaches compressible spacers that are affixed to a "stem" rather than the external wall of a holder. Li's cupholder space is separate from the stem. Li's stem fits into the cross section of a car door pocket or a console opening.

Second, Li does not teach inserting a holder into an automotive cupholder (requiring a cylindrical or frustoconical cavity), but rather inserting a cupholder into *rectangular* cavities in the console or door. (emphasis added) (3:15-34).

Third, Li's stem does not extend outwardly from the external wall of the holder cavity.

Fourth, there is no teaching or motivation in either Bradley or Li to combine the two references to create applicant's "external crushable extension extending *outwardly* from and of unitary construction with the exterior wall." In other words, Li does not disclose a holder cavity

formed by a structure, the outer wall of which has a crushable extensions formed integrally from the outer wall.

Fifth, Li further teaches away from applicant's invention because Li's holder is made from foam, and foam is not a material suitable for forming a crushable extension of unitary construction as in applicant's holder.

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